

# **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WISCONSIN  
3 GREEN BAY DIVISION

4 = = = = =

5 EQUAL EMPLOYMENT OPPORTUNITY  
6 COMMISSION,

7 Plaintiff,

8 v. Civil Action No. 2:17-cv-70

9 WAL-MART STORES EAST, LP,

10 Defendant.

11 = = = = =

12 Deposition of KENT ABITZ

13 \*Contains Confidential Portions\*

14 Friday, February 22, 2019

15 1:37 p.m.

16 at

17 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
18 310 W. Wisconsin Avenue  
19 Suite 500  
20 Milwaukee, Wisconsin

21  
22  
23  
24  
25 Reporter: Christal A. Hansen, CSR-IA/IL, RPR

<p style="text-align: right;">Page 42</p> <p>1 in domestics and housewares, 8 to 15. If you 2 included apparel, like now we include apparel 3 and homelines, but not -- I don't think back 4 then there would be that many. 5 Q. And do you have a memory of how many 6 domestics and housewares employees were 7 full-time when you first started at the 8 Manitowoc store? 9 A. No. 10 Q. Those departments are open 24 hours 11 seven days per week, correct? 12 A. Yes. 13 Q. And staffed 24 hours a day seven days 14 per week, correct? 15 A. The department specifically? 16 Q. Right. 17 A. No. 18 Q. What happens? Why aren't they -- what 19 do you mean that they're not staffed 24 hours a 20 day seven days a week? 21 A. Once we get to 10:00 p.m., the third 22 shift would come in and take over the 23 responsibility of staffing our store. There 24 wouldn't be a specific associate assigned to 25 domestics and housewares the entire evening</p>	<p style="text-align: right;">Page 44</p> <p>1 have been the people printing or setting -- 2 excuse me -- Marlo Spaeth's schedule? 3 A. I can give you an idea of who would do 4 it. I don't know who did it. It would be the 5 housewares/homelines, if you will, assistant 6 manager. 7 Q. And am I right that that was 8 Julia Stern in 2015? 9 A. Yes. 10 Q. As the store manager you have 11 familiarity with performance appraisals, 12 correct? 13 A. Yes. 14 Q. And you can identify performance 15 evaluations by looking at them; is that correct, 16 from Walmart? 17 A. Yes. 18 (Exhibit Nos. 92 - 94 marked for 19 identification by the reporter.) 20 Q. So, directing your attention to what's 21 been marked as Exhibit 92 that's in front of you 22 dated October 27th, 1999, do you recognize what 23 this document is? 24 A. A performance appraisal. 25 Q. And can you tell me who the employee is</p>
<p style="text-align: right;">Page 43</p> <p>1 unless there was really heavy freight there. 2 Q. And when you say "the entire evening," 3 at what time does that change to the situation 4 where there's a domestic and housewares employee 5 staffed there? 6 A. I'm not sure of the exact time. Either 7 6:00 a.m. or 7:00 a.m. 8 Q. And do you recall how many department 9 managers worked in domestics and housewares 10 department when you first began the job as store 11 manager in Manitowoc? 12 A. I know for sure one. I'm not sure if 13 there was two because the structure changes back 14 then, but for certain there was one. 15 Q. And are department managers typically 16 full-time? 17 A. Yes. 18 Q. Hourly, paid by the hour, correct? 19 A. Yes. 20 Q. Prior to the date that Marlo Spaeth was 21 terminated, did you have a role in setting 22 schedules? 23 A. No. 24 Q. So, to your knowledge, in June -- in 25 2015 before July 10th, who -- in 2015 who would</p>	<p style="text-align: right;">Page 45</p> <p>1 being appraised? 2 A. Marlo Spaeth. 3 Q. And I'm right that Brett Wiley's 4 signature appears on this document; is that 5 correct? 6 A. Yes. 7 MR. BULIOX: I'm going to object 8 to the extent it calls for speculation. 9 Q. To your knowledge, who's Brett Wiley? 10 A. Brett Wiley was the, I believe, the 11 store manager before Jason. 12 Q. And I guess I said signature. I should 13 say his name is printed in Print Supervisor's 14 Name, do you see that, Brett Wiley? 15 A. Yes. 16 Q. And I'll direct your attention to 17 Exhibit 93. 18 Do you recognize what that document 19 is? 20 A. Performance appraisal. 21 Q. And who is the associate being 22 appraised? 23 A. Marlo Spaeth. 24 Q. And do you agree with me that 25 Brett Wiley's printed name is also on this</p>

<p style="text-align: right;">Page 62</p> <p>1 agree with me she typed June 3, 2015?</p> <p>2 A. Where?</p> <p>3 Q. I'm sorry. That next to Marlo's name,</p> <p>4 Marlo Spaeth's name, the date is June 3, 2015?</p> <p>5 A. Yes.</p> <p>6 MS. VANCE: Actually, I need a</p> <p>7 break. Can I call a break, a bathroom break for</p> <p>8 10 minutes.</p> <p>9 MR. BULIOX: Sure.</p> <p>10 (Recess.)</p> <p>11 MS. VANCE: We are back on the</p> <p>12 record after a little break.</p> <p>13 EXAMINATION</p> <p>14 BY MS. VANCE: (Continued.)</p> <p>15 Q. Mr. Abitz, is there anything about your</p> <p>16 prior testimony that you wanted to add to or</p> <p>17 clarify after this break?</p> <p>18 A. No.</p> <p>19 Q. I would like to show you what was</p> <p>20 marked at a previous deposition as Castro</p> <p>21 Deposition 86.</p> <p>22 Now, do you recognize this document?</p> <p>23 A. It's an Accommodation in Employment</p> <p>24 Management Guidelines.</p> <p>25 Q. And if you wanted to find this in the</p>	<p style="text-align: right;">Page 64</p> <p>1 According to this document, a request</p> <p>2 for a job adjustment can sometimes be handled at</p> <p>3 the store level without escalating beyond the</p> <p>4 store level; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And this document gives managers</p> <p>7 guidelines about which job adjustments can be</p> <p>8 made at the store level, correct?</p> <p>9 A. Yes.</p> <p>10 Q. I mean, you know, is it this policy</p> <p>11 that -- these management guidelines that you</p> <p>12 would consult if you were trying to figure out,</p> <p>13 okay, does this reason -- you know request for</p> <p>14 reasonable accommodation fall within my</p> <p>15 authority as store manager? Is this the</p> <p>16 guidelines you would consult?</p> <p>17 A. Yes. It's been updated many times, but</p> <p>18 yes. Even if -- if I might add, even if there</p> <p>19 was a job aid, I would partner, certainly, with</p> <p>20 my HR representative, which would be Karen.</p> <p>21 And then, if we may disagree, we</p> <p>22 certainly would partner with Lee Spude. Or, if</p> <p>23 we still weren't clear, we would send something</p> <p>24 to the -- I think it's some kind of packet to</p> <p>25 the Accommodation Service Center.</p>
<p style="text-align: right;">Page 63</p> <p>1 computer, how would you find it?</p> <p>2 A. I would look on the WIRE.</p> <p>3 Q. Right. And am I correct that</p> <p>4 management guidelines are geared towards</p> <p>5 salaried members of management at the store</p> <p>6 level?</p> <p>7 A. I would say yes.</p> <p>8 Q. And do these Accommodations in</p> <p>9 Employment (Medical-Related) Management</p> <p>10 Guidelines - Walmart come from Walmart</p> <p>11 headquarters to the best of your knowledge?</p> <p>12 A. To the best of my knowledge, yes.</p> <p>13 Q. And I'll ask you to -- well, let me</p> <p>14 also ask you, have you consulted this management</p> <p>15 guidelines before in your job as a store</p> <p>16 manager?</p> <p>17 A. I'm sure I have. I certainly don't</p> <p>18 recall when, but any time that there would be a</p> <p>19 request for accommodation or if I thought there</p> <p>20 was a request for accommodation, I would</p> <p>21 certainly pull the policy up and try to identify</p> <p>22 if it's something that we could do or who I</p> <p>23 would, you know, team up with or partner with.</p> <p>24 Q. All right. And then, I'll ask you to</p> <p>25 read through this to see if you agree with me.</p>	<p style="text-align: right;">Page 65</p> <p>1 So, if I'm going to approve a job aid,</p> <p>2 which is basically what this is asking to do,</p> <p>3 it's giving me permission that I can make those</p> <p>4 decisions. If it's something I wasn't</p> <p>5 comfortable with, I would certainly partner</p> <p>6 with, you know, the resources that I have.</p> <p>7 Q. And the resources that you have are</p> <p>8 Karen Becker as your personnel coordinator in</p> <p>9 your store, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And Lee Spude as your market human</p> <p>12 resources manager at the market level in</p> <p>13 Green Bay, right?</p> <p>14 A. Yes.</p> <p>15 Q. I want to turn your attention to the</p> <p>16 second page of Exhibit 86. And we see at the</p> <p>17 top that there's a list. One of the lists says</p> <p>18 Scheduling. And if you'll read with me --</p> <p>19 "Scheduling: Minor changes to</p> <p>20 availability and scheduling preferences does not</p> <p>21 include approval of set schedules, guaranteed</p> <p>22 hours or creating special schedules."</p> <p>23 Did I read that right?</p> <p>24 A. Yes.</p> <p>25 Q. Is it your understanding that these</p>

<p style="text-align: right;">Page 66</p> <p>1 management guidelines give you the authority to</p> <p>2 approve requests for minor changes to</p> <p>3 availability and scheduling preferences within</p> <p>4 the store?</p> <p>5 A. Define "minor," I guess, would be --</p> <p>6 Q. Well, that's what I want to ask you.</p> <p>7 But, first I'm trying to establish</p> <p>8 that we agree this management guideline says,</p> <p>9 Hey, the store manager in the store, you know,</p> <p>10 acting on his or her own --</p> <p>11 A. Absolutely.</p> <p>12 Q. -- authority can --</p> <p>13 A. You could make changes, yes.</p> <p>14 Q. -- can approve minor changes to</p> <p>15 availability and scheduling preferences?</p> <p>16 A. Yes.</p> <p>17 Q. And in your experience as store manager</p> <p>18 for Walmart, of Sheboygan North or Manitowoc,</p> <p>19 have you ever approved minor changes to</p> <p>20 availability or scheduling preferences, you</p> <p>21 know, using these -- consulting -- or according</p> <p>22 to these guidelines?</p> <p>23 A. I'm sure I have, yes. I'm not sure the</p> <p>24 exact detail, but I'm certain if someone would</p> <p>25 come and say, "I need to have off Tuesdays for a</p>	<p style="text-align: right;">Page 68</p> <p>1 memory of a specific associate who needed a</p> <p>2 minor change to availability and scheduling</p> <p>3 preference that you approved?</p> <p>4 A. None that I can think of right now.</p> <p>5 Q. You just -- it's not uncommon, you know</p> <p>6 you've done it before; is that fair?</p> <p>7 A. I would say I've done it before; I</p> <p>8 would say that's fair.</p> <p>9 Q. Okay. And if Marlo Spaeth asked for</p> <p>10 changing her 5:30 schedules to end at 4:00,</p> <p>11 would your judgment call in that situation be,</p> <p>12 yeah, let's do that, that's a minor change to</p> <p>13 availability and scheduling preference?</p> <p>14 A. That would not.</p> <p>15 Q. And in that case, if you were asked to</p> <p>16 change Marlo Spaeth's -- or to maintain</p> <p>17 Marlo Spaeth's availability to end at 4:00, if</p> <p>18 your testimony is, I would not do that in-house</p> <p>19 on my own authority, what steps would you take?</p> <p>20 A. I would partner with Karen. I would</p> <p>21 partner with Lee. And that would, in my</p> <p>22 opinion, would go to the Accommodation Service</p> <p>23 Center, help center, in my opinion.</p> <p>24 Q. And to be clear, no one at Walmart ever</p> <p>25 approached Marlo Spaeth or a family member of</p>
<p style="text-align: right;">Page 67</p> <p>1 doctor's appointment," certainly I would</p> <p>2 consider that, you know, something that I could</p> <p>3 accommodate.</p> <p>4 Q. And with that kind of request, does the</p> <p>5 associate fill out a formal request form? Do</p> <p>6 you document that in any way?</p> <p>7 A. Yes, it goes into the personnel file.</p> <p>8 If you're going to create a -- at least now -- I</p> <p>9 don't remember back in 2013 -- if you were going</p> <p>10 to create, like, a job aid, let's say an</p> <p>11 associate had surgery on their foot and they</p> <p>12 wanted to wear a boot to work -- to work and</p> <p>13 walk up front and they had to use a cane,</p> <p>14 certainly that would go into the personnel file</p> <p>15 and something that I could approve.</p> <p>16 Q. And what's the form that would go into</p> <p>17 the personnel file?</p> <p>18 A. I don't know the name of it exactly.</p> <p>19 Q. Is it different than the paperwork that</p> <p>20 is sent to the accommodations service center?</p> <p>21 A. I believe so.</p> <p>22 Q. You gave the example of please don't</p> <p>23 schedule me as available on Tuesdays because of</p> <p>24 doctor's appointments.</p> <p>25 Can you think -- do you have any</p>	<p style="text-align: right;">Page 69</p> <p>1 hers with the paperwork that goes to the</p> <p>2 Accommodation Service Center, correct?</p> <p>3 MR. BULLIOX: I'm going to object</p> <p>4 to the extent it calls for speculation and</p> <p>5 assumes facts not in evidence such as there</p> <p>6 being any conversation about accommodation</p> <p>7 paperwork in the first place. So, subject to</p> <p>8 that, go ahead and answer.</p> <p>9 A. Yeah, I wouldn't know if anybody had</p> <p>10 done that.</p> <p>11 Q. You know that you did not, correct?</p> <p>12 A. Yeah, I did not.</p> <p>13 Q. And have you had a situation where an</p> <p>14 associate who is a subordinate to you as a</p> <p>15 salaried member of management did do this</p> <p>16 process of submitting the paperwork to</p> <p>17 Accommodation Service Center about scheduling</p> <p>18 availability?</p> <p>19 A. A salaried member of management?</p> <p>20 Q. Yeah. So, that would be years, a</p> <p>21 broader span of years in your career.</p> <p>22 A. I don't know that a salaried member of</p> <p>23 management would take care of that situation.</p> <p>24 Q. Oh, are you saying it would be more</p> <p>25 likely to be only a store manager?</p>